

Summary
Wetland Mitigation Banking Advisory Team
March 22, 1999 Meeting

Advisory Members Present: Merri Erickson, WA Cranberry Alliance; Kathy Combs, WA Wetlands and Mitigation Co.; Jennifer Thomas, King Co.; Kevin Noon, Critical Habitats; Lynn Micheau, Grays Harbor Economic Development Council; Steve Erickson, WA Native Plant Society; Jodi Walker, Building Industry Assoc. of WA; Paul Wagner, WSDOT; Bob Zeigler, WDFW; Sono Hashisaki, Springwood & Assoc.; Nancy Brennan-Dubbs, USFWS; Bob Landel (for Paul Roberts), City of Everett; Gail Terzi, Army Corp of Engin (via conference call).

Advisory Members Absent: Gilbert Alvarado, City of Moses Lake; Tony Bynum, Yakima Nation; Bill Garvin, WA Farm Bureau; Joe Mentor, Lasher, Holzapfel, Sperry & Ebberson; Ron Shultz, National Audubon Society.

Ecology Staff Present: Lauren Driscoll, Judy Geier, Patricia Johnson, Andy McMillan.

Other Interested Parties Present: Dean and Del Swanson, Farmers; Bob Kessler, Foster Wheeler Environ. Corp.; Dwayne Michel, Farm Bureau and Michel Development; Brian Perleberg, Northern Resource Consulting Inc.; Michael Miller, HDR Engineering; Key Baldwin, Shoalwater Bay Indian Tribe; Heather Roughgarden, WSDOT; Lennie Rae Cooke, Pacific International Engineering; Rick Fast, Land Use Consulting; Bill Lewallen, Snohomish Co. Airport; Charlie Newling, Wetland Science Inc.; Joe McHugh, Makai Surf.

Meeting Materials: Agenda, Draft February Meeting Summary, Possible Approaches to Financial Assurance, Service Area, Bank Site Selection I, Bank Site Selection II, Draft Scoping Notice, Updated Schedule of Meetings.

Opening Announcements

Judy Geier began the meeting by asking the team if the system of emailing a draft summary of the previous meeting worked, if everyone received the email and had time to comment. A few team members did not have a chance to review the previous month's meeting summary, but all team members present received the email.

Lauren Driscoll updated the team on the process of establishing a federal subcommittee to address creating a consolidated Federal/State certification process. No date had been firmly set, but the afternoon of Monday, April 5, 1999 was stated as being probable with the location being somewhere north of Ecology HQ.

Geier clarified the role of Andy McMillan (Ecology) at advisory team meetings. He is an internal Ecology member, and as such is relied upon to clarify points when team discussions

become unfocused or get off-track. McMillan then provided an update regarding the legislative amendment to remove language from the statute. Thus far a bill has not been found to attach the amendment to. Some possibilities still exist, but at the time of the meeting it was too early to tell if an amendment would get to the legislative floor. McMillan clarified that team support was not the problem, but if Ecology required any additional assistance team members would be notified.

Geier informed the team that a Draft Scoping Notice for the Environmental Impact Statement (EIS) would be ready for Program Manager signature by Thursday, March 25, 1999. It would then be published the following week as a public notice and would be open to comments for at least 21 days, probably 30 days. Team members could submit comments before Thursday, March 25, 1999, or they could wait and submit comments during the public notice.

Geier also informed the team that Ecology is assembling a meeting of technical personnel to discuss performance standards. The group will assist Ecology in developing a list of performance standards, to link with credit release, for presentation to the advisory team, scheduled for the May meeting.

Financial Assurances

Judy Geier introduced the Possible Approaches to Financial Assurance Under Chap. 90.84 RCW Wetlands Mitigation Banking document. Several minutes were spent reviewing the content of the document. From that review, Ecology wanted team members to focus on addressing the following points:

- ✓ How much Financial Assurance is necessary is offset RISK of environmental loss due to bank failure?
- ✓ What approaches should be used to secure assurances?
- ✓ Flexibility for developing case-specific financial assurances?

In the process of reviewing the document, a few questions and comments arose. They are as follows:

- Regarding the topic of assessing risks, the sale of credits represented an impact to the environment prior to full performance standards being met. So when was the risk incurred? – at construction of the bank? when credits are sold? or only if the bank fails after credits are sold?
 - Was this referring to a bank failure after performance standards were met? If credits are not sold until performance standards are met, what is the risk?
 - It was clarified that phased release of credits is in statute.
 - Some team members mentioned that no financial assurances should be required until credits were ready to be released (unless wetland impacts were incurred during bank construction).
- Under the Managing Risk section, the point regarding adequate debit to credit ratios created some confusion. It was clarified that this meant a debit ratio of more than 1:1 may be required to compensate for risk of failure. A team member stated that this usually referred to the temporal losses of wetland functions. Ratios also included consideration of the risk of failure and offsite considerations.
- Regarding the Surcharge on Credits approach to financial assurance, it was clarified that no funds would be retained until credits were sold; financial assurance would begin at the release of credits.

Following the review of the Financial Assurances document, Geier asked the team at what point financial assurances should be required? Advisory team responses to this question and other comments are as follows:

- Will the rule include only one option for addressing financial assurances? or could it be flexible and addressed on a case specific basis?
- A team member preferred the up-front financial assurance and the surcharge options.
- It was mentioned that if an up-front bond is posted based on the estimated construction costs, this may or may not correlate to the actual costs of remediating the bank. Or a bank may catastrophically fail. A suggested method to address the costs of substantial remediation would be to create a superfund of sorts. A fee could be charged to all banks and kept in a general fund- a kind of risk sharing.
- There was some disagreement about whether all public agencies should be required to put up bonds of financial assurance. It was mentioned that currently public agencies are exempt from providing financial assurances. In response, it was noted that *Federal Guidance* requires agencies to have financial assurances as well as private organizations. Originally, it was believed that government agencies exist in perpetuity and, therefore, pose a low risk for abandonment of a bank project. However, the *Federal Guidance* suggests that public agencies also be required to post financial assurances. The reasoning being that without a dedicated fund government agency projects are at risk for budget cuts.
- Several team members stressed flexibility. The rule should provide general guidelines and lay out options, but every instrument will be different and the specifics of what type and how much of a financial assurance should be left up to the Mitigation Bank Review Team (MBRT) and the bank sponsor to negotiate.
- During the drafting of the bank instrument the financial assurances and phased release of credits should be discussed, as both are dependent upon the site, sponsor capability, and public support.
- Financial assurance built into cost of credits creates more of a burden – banker needs some idea of costs up-front.
- The more information available helps determine the likelihood of success of the bank. This reduces the risk of siting a bank in an inappropriate location and, therefore, requires less financial assurance.
- It was pointed out that jurisdictions with less money do not have the resources to get better information on their watersheds, and they should not be penalized for that by having to require higher financial assurances from a potential banker.
- It was suggested that the rule be crafted to focus on monitoring to increase the confidence that a bank will succeed. Monitoring could be used to offset risk and thereby reduce financial assurances.
- Recognizing the need for flexibility, one team member stressed the importance of a framework and predictability and the need to time the release of credit with financial assurances. As an example, the city of Everett requires a 300% (of construction costs) performance bond. When performance standards are met, that bond is released and a much lower maintenance bond is retained.
 - It was pointed out that performance bonds of this type are antagonistic to private bankers.
 - Such a high performance bond dismissed the role of research and prior studies into proper siting of banks.
- Risk is assumed when compensating for impacts. Financial assurance should be tied to when the risk is incurred – at compensation for impacts, either impact of bank or impacts offset by bank.

- What happens to the bond if banker goes bankrupt? Who administers the bank? Who does maintenance and the long-term operation?
 - Certain financial institutions (banks) are in the business of establishing bonds. In the event of bankruptcy, the trustee of the bond would receive the bond funds and give them to the mitigation bank administrator.
 - What happens if the bank is not completed? What if the bank still has credits available? Are they still sold? Who would get the money?
 - Would administration of the bank fall to the lead agency? Would that automatically be Ecology?
 - Funds to remediate a bank must not go into a general fund.
- Who determines what the financial assurances will be? Should this be addressed in the rule or in an individual banking instrument?

Public Comments

- Establish a remediation fund based off a percentage of the taxes - an appropriation for an emergency fund.
- Some projects could be very long-term, such as restoring an entire sub-basin as one mitigation bank. With no immediate end in sight, how would financial assurances be done? One way would be to have the entire project be in phases and financial assurances would be posted per phase and credits would be released per completed phase.
- 3 types of bonds:
 - A construction bond to cover creation of the bank, removal of exotics, earthwork, etc. When the construction is complete the bond is released.
 - Performance bond, including short-term monitoring and maintenance and when performance standards are met this bond is released.
 - A long-term trust bond, trust fund goes to trustee, or bank manager. Long-term trust begins when performance standards are met and the performance bond is released.
 - All bonds are secured at the same time; before construction is started
 - Ecology and MBRT should only be concerned with whether the bonds are legally binding. The actual bonding should be left to the banker and the bonding entity.
- A construction bond is often secured from local governments with a grading permit.
- The financial assurance could be a powerful motivator. The sale of credits does not = risk, it is the release of credits that = risk to environment. Withholding credits is the biggest leverage to assuring the success of a bank. Credits should be released on a sliding scale based on the risk of the bank.
- There should be a list of elements for assessing risk.

Service Area

Lauren Driscoll introduced the Service Area document, which outlined an initial proposal for how service areas should be addressed in the rule. It is as follows:

- ✓ Service areas should be determined on a case-by-case basis for each bank;
- ✓ The rule should set minimum and maximum sideboards for the size and scope of service areas; and
- ✓ The rule should specify a set of criteria that the bank sponsor and MBRT use to determine the service area for specific banks within those sideboards.

Based on this proposal, Driscoll asked the team to focus on following questions:

- ✓ Is this a good approach?

- ✓ Shall the rule specify a minimum?
- ✓ How do we address it in the rule?

The team generated the following comments and questions:

- The idea of including a minimum in the rule was a problem for some team members.
 - What would the minimum be based on?
 - Could use sub-basin, drainage basin or how stormwater is addressed.
 - Most local jurisdictions do not define sub-basin or drainage basin, and stormwater boundaries may not be based on hydrology. If these terms are defined, there is not one common definition that could be used in the rule. At least one team member was uncomfortable with the idea of defining a minimum in the rule.
 - Why was a minimum necessary? In response Ecology stated that if the rule established a minimum that would be a starting point from which an individual bank could grow depending on the specific criteria used to establish service area and the site-specific conditions of the bank.
- The idea of a maximum was generally liked, and most team members expressed that Water Resource Inventory Areas (WRIA's) would be acceptable maximums. Some members did express concern about a maximum.
 - WRIA's are so big, can't imagine a bank operating throughout a whole WRIA. WRIA's are too big.
 - There should not be a maximum. It eliminates flexibility. Neither max nor min should be defined in rule, but appropriate examples should be given to guide the MBRT.
 - Setting a maximum assumes that nothing could be compensated outside of it (WRIA), but for certain types of mitigation, a larger area may be better, i.e. linear projects like road impacts.
 - If service area max is set as WRIA, the rule should allow for smaller service areas to be established. It was clarified that the neither the rule nor the MBRT could require a bank to have a larger service area. But could either force a bank to have a smaller service area?
- It should be an uphill battle for a bank sponsor to justify a larger service area.
- It was generally accepted that WRIA would be the max, and service areas would fall within the WRIA except in exceptional circumstances.
 - Should the rule clarify what exceptional circumstances are? Or the bank instrument?
 - It was suggested that the rule should define exceptional circumstances, but an individual bank instrument should specify what exceptional circumstances would be appropriate.
 - No list of exceptional circumstances could be all-inclusive; something would be omitted. Any parameters are limiting and reduce flexibility.
- Within the WRIA, Driscoll pointed out that ecoregions could be overlaid to further divide the WRIA based on ecological criteria, for example dividing lowland areas of a WRIA from highland areas in the same WRIA.
- The rule should leave it open so things could be addressed in the future. The rule should be written with a general concept of service area in mind and this concept should be used to establish the specific service area for an individual bank.
- It was acknowledged that service area size could potentially be different for Eastside banks as opposed to Westside banks.
- A team member expressed hesitation at having a service area larger than a WRIA. It was mentioned that the value or quality of the wetland should not be used as an exceptional

circumstance otherwise those rural jurisdictions that still have a lot of high quality wetlands and restoration sites could potentially be forced to be the bank for the rest of the state.

- It was pointed out that the state cannot certify a bank without local government signatures
- Even if WRIA was set as the max service area, local governments would have an input in negotiating the specific service area.
- It was pointed out that the rule cannot defer decision making to local governments, local regulations could be more stringent than the state rule as far as determining a minimum service area.
- Fish considerations: Need to tie in geographic limitations for ESA listed species, Chinook are one example that should be mitigated for in the same affected sub-basin due to genetic strains of the species existing in different sub-basins.
- Treaty responsibilities must also be considered in determining the size of service areas.
- The size of the service area is a separate question from function equivalents and out kind mitigation. Allowing small impacts outside an established service area to be mitigated at the bank simply because it is convenient would establish a dangerous precedent. There must be a reason for using the bank.
- Cross jurisdictions? Political jurisdictions should be used as a service area overlay as well.
- The MBRT should set service area limits based on criteria.

Public Comments: Minimum/Maximum Question

- Find a site that meets as many requirements as possible for the most credits. How far will the functions of that site be able to reach? That should define the size of the service area. Anything else would be too limiting.
- The rule should not establish a max. Keep it flexible. What about a bank that provides migratory bird habitat? That would reach beyond a WRIA.
- What about WRIA's that extend beyond county boundaries?
- Specific language defining a service area should be up to the MBRT. Based on the criteria they should decide on case by case basis.
- Service area is only provides an opportunity for compensation. The debit process determines if a bank is a viable mitigation option for an impact, regardless of the size of the service area.

Criteria Used to Determine Service Area

Driscoll then spent several minutes reviewing the criteria listed in the document that could be used for determining service area.

1. Mitigation Activity
2. Ecoregions, Physiographic provinces
3. Bank site design elements
4. Site selection rationale
5. Available information
6. Habitat
7. Appropriate types of compensation
8. Jurisdictional issues
9. Demand for credits/economic viability

Driscoll asked the team if there were additional criteria that should be included or removed.

Team comments and questions follow:

- The mitigation activity bullet (#1 on the Service Area document) was recommended to be discarded.

- That is not relevant to the size of the service area, unless it was to be used as an incentive.
- Regarding the appropriate types of compensation bullet (#7).
 - It was pointed out that if a bank was meant to compensate for low quality class IV wetland impacts, that could have an influence on the size of the service area.
 - A banker should not be expected to know ahead of time what kind of impacts that the bank would be compensating.
- The bank site design elements bullet (#3 on S.A. document) was thought be similar to type of compensation. It should not be discarded, but it should not be a primary factor for determining service area.
- It was recommended that ‘defensibility over time’ be added under the Site Selection Rationale bullet (#4).
- Service area should be tied to functions provided. Don’t want to create disincentives or penalize if a bank can’t meet all the criteria.
 - It was pointed out that the list of criteria were not requirements. They are things to consider – guidelines.
- The amount of information available (#5) should not be used to determine the size of service area. The amount of information available should be an incentive. Service area determination should be based strictly on the functions/benefits provided by a bank.
- The team generally agreed that determination of service area was not a good place to provide incentives through various criteria. The criteria should be guidelines for decision-making.
- Regarding the economic viability bullet (#9) it was stated that it was nobody’s business but the banker’s if credits will be able to be sold.
 - It was mentioned that if there was no demand for a bank’s credits, political pressure could influence the weakening of regulations to encourage wetland impacts so that a bank would get used.
 - If there was no demand for credits, how would a banker know what functions would need to be compensated for within the bank’s service area?
- If a bank is not fully successful, could the service area be re-negotiated? In response, this issue would probably be addressed through number of credits and credit release.

In response to the team’s comments, Driscoll reviewed which criteria the team felt were related to the technical viability of the bank and were therefore relevant to the determination of service area size. The list of criteria and their bullet numbers follow:

- #2 – Ecoregions,
- #3 – Bank site design elements,
- #6 – Habitat,
- #7 – Appropriate types of compensation,
- #8 – Jurisdictional issues,
- #9- Demand for credits/economic viability.

Public Comments: Service Area Criteria

McMillan commented on behalf of Ecology that regarding the available information bullet (#5), more and better information allows an agency to say “yes, this project looks good” and to make a decision resulting in a larger service area. Regarding the demand for credits (#9), though the economic viability of the bank is not the agencies role, the demand for credits is influenced by the types of wetland impacts occurring or envisioned. The more information a banker has in terms of demand for credits, i.e. County Comprehensive Plans, the more comfortable an agency will be certifying a bank and establishing a service area.

Additional public comments were as follows:

- Leave the banker the incentive to fail – let the free market handle the economic viability of the bank. If a bank is created that does not sell, then it is an ecological benefit. Disagrees with notion that regulators will allow impacts just to sell bank credits.
- An appeals process is needed for those situations when a regulatory agency or local government does not sign on for political reasons rather than scientific reasons.
- All criteria should be voluntary
- Need consistency/framework for considering economic marketability, predictability. WRIA's are generally accepted. Use it as a standard and any divergence up or down should be justified. Allows a banker to know where credits can be sold.
- Reason for mitigation banking is to cover large watershed. Mitigation areas should be discussed in the state regulation. They are discussed in the *Federal Guidance*.
- Mitigation areas may address the smaller impacts.
- Both banking and areas should be used to address smaller impacts.

In response to the associate member's comment regarding mitigation areas, Ecology acknowledged that this issue should be a topic for discussion at a future meeting.

Site Selection I

Driscoll introduced the Bank Site Selection I document and briefly reviewed the content of the document. This discussion centered on how the rule should address the mitigation activity, i.e. restoration, creation, enhancement, and preservation. The statute, Chapter 90.84 RCW, requires that the rule address the following questions:

- ✓ How do we give priority to restoration of degraded or former wetlands? [RCW 90.84.030 (1)(a)]
- ✓ How will adequate assurances of success and overall environmental benefit of banks involving creation and enhancement be determined and ensured through the certification process? [RCW 90.84.030 (1)(b)]
- ✓ How will exceptional circumstances be determined in regard to preservation banks? [RCW 90.84.030 (1)(c)]

The team was asked to focus on these questions. Driscoll then explained several potential methods to give priority to restoration (as outlined in the Site Selection I document). The team was asked if any other mechanisms existed that would give priority to restoration activity, and if any of the mechanisms discussed were appropriate. Advisory team comments and questions were as follows:

- The use of a larger service area (Mechanism B in the site selection I document) as a method to give priority to restoration was immediately rejected by the team.
- It was clarified that there is a difference between priority and incentive. An incentive is one method to give priority.
 - Ecology responded that they did not want to use the size of the service area as an incentive.
- A team member commented that the ease of using restoration as the mitigation activity was built into the system, so why were incentives necessary?
 - Ecology responded that the statute requires that priority be given to restoration, but perhaps the team would prefer that incentives were not used to accomplish this?

- The option of providing a higher credit value for restoration was clarified. For example, 1 acre of restoration could = 1 acre of credit, while 1.5 acres of enhancement might be required = 1 acre of restoration credit.
 - This was criticized, because credit value should be based on the functions that the wetland provides.
 - A team member stressed that successful creation should not be discouraged. Credit values and release should be based on meeting performance standards.
 - A team member noted that restoration should theoretically have a higher value as it re-establishes ecological and hydrologic linkages, thereby creating better habitat and restoring hydrologic conductivity. These functions should automatically have a higher value.
 - Higher credit value should be saved for the determination of credits not for prioritizing restoration.
 - Ecology noted that the team appeared to want to table the discussion of a higher credit value for restoration until the discussion topic of credit valuation.
 - A team member asked how Ecology values (conversion ratio) restoration currently? Ecology responded that currently restoration and creation have the same conversion ratio.
- A team member mentioned that the definitions of restoration and creation etc. are being blurred. Seeing creation activities with elements of restoration. This doesn't warrant higher credits.
 - In response to this, it was noted that perhaps the rule should include definitions of the various mitigation activities and specify that restoration restores wetland function to what was formerly, but is no longer, a wetland.
 - Because restoration is specifically mentioned in the statute, it was stated that the rule should define it. Ecology would check with the Attorney General to determine if that would be necessary.
 - It was noted that both the Army Corp of Engineers (Corp) and the *Federal Guidance* have definitions of the various mitigation activities.
 - Some team members voiced concern about including definitions in the rule. There would always be something not accounted for.
- A team member stated that a straightforward statement of priority (Mechanism A) is all that is needed.
- Site selection criteria will create a built-in prioritization for restoration.
- Regarding the earlier release of credits for restoration (Mechanism D), it was mentioned that this should happen anyway since restoration would generally have a lower risk of failure and should be able to meet performance standards earlier.

The discussion then focused on how adequate assurances of success and overall environmental benefit of banks involving creation and enhancement would be determined and ensured through the certification process? Driscoll pointed out that, in regard to this question, creation and enhancement each have their own risks. Creation has a higher risk of failure and if it is successful it will provide environmental benefits. Enhancement involves wetland acreage that is already successful and therefore has a higher risk of not increasing the overall environmental benefit, as this is much more difficult to measure. Several alternatives were outlined for both of these activities to ensure success and environmental benefit. The team was asked which of these alternatives was appropriate and if there were any additional alternatives. Team comments and questions were as follows:

- The team immediately rejected the lower credit value alternative (Alternative B in the document) for both creation and enhancement.

- Regarding creation, the team advised that all alternatives involving credits (release or valuation, i.e. Alternatives B, E, and F from the document) be removed and deferred until the discussion on credit release. It was mentioned that these alternatives were not incentives or assurances for success, rather they were disincentives for creation.
- Regarding enhancement it was noted that structural functions are easier to measure than process functions like nutrient cycling (i.e. how bank functions in watershed). How can we encourage certain functions or creation of a bank to capture or encourage development of those functions?
- For enhancement, it was suggested that if the bank was certified it will provide environmental benefits. The MBRT would see to that.
- Both activities should have higher financial assurances.
- What about banks that are a mixture of the three mitigation activities?
- The rule should have an approach that looks at the final product in comparison to the starting point of the site. This would ensure environmental benefit.
- The information required to establish a bank should inherently favor restoration since creation would entail more work and studies, particularly on underlying hydrology. Creation has been favored in the past. Through this rule, restoration would be favored due to its ease of construction, lesser risk, and better ability to succeed.

Driscoll then asked the team to consider the language in the shaded block on page 7 of the Site Selection I document. It was stated that Ecology is proposing to use this language for inclusion in the rule to address the exceptional circumstances when preservation alone could be used to generate bank credits. The team was asked if this language was appropriate. Team comments and questions were as follows:

- It was mentioned that, with regard to the recommended criteria for consideration of preservation as mitigation, some local jurisdictions do not use this rating system – consistency issues.
- It was mentioned that the list did not mention a lot of functions, not all-inclusive.
- Several team members questioned whether this type of wetland preservation precluded the preservation of upland buffers. It was stated that the ability to protect the uplands helped to ensure the protection of the preserved wetland. Though it was acknowledged that if uplands were considered as credits this would mean a net loss of wetlands.
- One team member mentioned that preservation could be used as a form of environmental blackmail, whereby there is a perceived action of development in a high quality wetland constituting an imminent threat. The wetland is preserved as mitigation for impacts elsewhere even though sequencing at the high quality site was never accomplished.
- It was suggested that site defensibility be added to the exceptional circumstances/preservation criteria list. This would include the need to preserve or the ability to manage the upland buffer.
- It was mentioned that preservation is a tool that can replace some functions right away, for example, fish habitat losses.
- It was acknowledged that preservation is for exceptional circumstances only, and perhaps the list of criteria may be too expansive.
- It was mentioned that the *Federal Guidance* has instructions for preservation.
- One team member noted that the preservation language was extracted from a policy that is still "draft" and that did not have "buy-off" from all agencies involved in its development. It was suggested that this team member would not be able to support inclusion of this language

in the rule; especially, the bullet "aquatic habitat or Wetland type that is rare in the area." This bullet was found to be too expansive.

Public Comments

- It was stressed that uplands should be included in preservation as providing an enhancement function to the preserved wetland.
- Wetland should be defined in rule and from this define restoration, enhancement and creation.
- It was suggested that restoration should be awarded with a larger service area since restoration sites often provide a 'bigger bang for the buck.'
- It was suggested that another alternative to give priority to restoration would be the juxtaposition of the restoration site in the landscape with regard to other habitats. As an example, where a restoration bank is placed could connect a wildlife refuge with a state management area and would therefore create a very valuable habitat function.
- Preservation should be given a higher priority value. Restoration, enhancement, and creation are not being done properly and therefore do not provide the same values and functions that preservation could.
- It was advised that determining credits and site suitability should not be confused or mixed. Higher percentage of credit could be given for meeting site suitability criteria, but not for mitigation activity.
- It was cautioned that preservation should not be allowed to be used alone as compensatory mitigation. It results in a net loss of wetland acreage and justifies an impact to another site.
- It was clarified that in exceptional circumstances preservation could generate credits, but whether or not these credits could be used for impacts would be another matter – up to the regulators to decide.

Site Selection II

Driscoll introduced the Site Selection II document, which focused on how banks could be sited in suitable locations. The team was asked to focus the discussion on answering the following two questions:

- ✓ How do we assure that suitable sites are selected for banks?
- ✓ How do we encourage locating banks at desirable sites?

In regard to the first question, Ecology wanted to the team to discuss whether the rule should include a general list (example listed on page 1 of the Site Selection II document) or a detailed list (examples WSDOT MOA and King County Rule) of criteria used for siting banks. Also, Ecology wanted the team to address whether the criteria should be prioritized. Team comments and questions were as follows:

- The team generally agreed that the rule should provide general criteria to maintain flexibility. Some parameters would be necessary so that the banker has some guidance, but the elements for success at one site may be very different at another site – site specific. The specifics should be handled by the MBRT.

Acknowledging the preference for general criteria, the team proposed adding several criteria omitted from the general list on page 1 of the Site Selection II document. Those additions are as follows:

- In addition to the buffer area size and quality, buffer area function was proposed.
- The disturbance regime of the site.
- The landscape context and position.

- The defensibility of the site (i.e. will the wetland be sustainable within the overall landscape now and over time).
- In addition to surrounding land use, it was pointed out that upper watershed land use was just as important to know.
- Integration with watershed planning.

In regard to the second question, how do we encourage locating banks at desirable sites? Two options were identified to accomplish this: 1) larger service areas, and 2) “bonus” credits. Ecology asked the team whether the rule should provide incentives for integrating bank site selection with watershed management plans. Team member comments and questions were as follows:

- Why should we certify a bank that is not in a suitable location?
- The difference between suitability and desirability was clarified. Desirable sites are those sites that have the highest priority for restoration based on watershed planning issues, limiting factors, social values, endangered species habitat or habitat connectivity. Suitable sites are those at which a sustainable wetland can be developed.
- It was noted that someone with a desirable restoration site could not be forced to create a mitigation bank there, just as someone wanting to create a mitigation bank on a suitable site could not be denied to do that.
- A number of team members stated that giving incentives for banks using or meeting watershed-planning requirements was contentious.
 - This incentive assumes that a county or local jurisdiction must have gone through watershed analysis and planning in order to prioritize sites as desirable.
 - It was stated that it was not fair to provide this incentive to bankers. They would go to counties or local jurisdictions with watershed plans. This is biased against rural areas or poor jurisdictions with out such watershed plans - disincentive.
 - A team member raised a concern that this type of incentive might be used against other bankers, such that more desirable projects would take priority for agency time or receive preference at the debit end.
- It was pointed out that high priority/desirable locations might not be the best place for a mitigation bank because they could be too close to development impacts. Also, jurisdictions with watershed plans might also have more expensive land costs.
- It was mentioned that projects tied to watershed planning would be better projects, providing higher functions, and receive more cooperation from state, local, and public entities and this would facilitate the bank process and be its own reward.
- There needs to be some site-specific functional analysis. Watershed planning is not always based on a function analysis. It could be influenced by politics rather than science.
- Some team members expressed that incentives were a good idea.
 - It must be possible to give an incentive for desirable siting without sacrificing functions. Otherwise, banks will be established on an opportunistic basis.
 - Bankers should be encouraged to build banks in locations where the banks will have the ‘biggest bang for the buck’ and make high priority linkages.
 - One of the benefits of banking is its ability to incorporate watershed planning.
- It was stated that the incentives were not based on science.

Public Comments

- Before the rule includes incentives for following watershed plans, Ecology should look at whether or not they are truly based on ecological functions and conditions or if the plan was the product of a political process.
- How does the rule want to move beyond “no-net loss” to affect the recovery and survival of listed fish species? How could the rule help?
- Regarding sites to encourage, it is important to know what makes a site so desirable. Is it a measurable or observable function or value? The rule should guide bankers to sites with the most functions and most social value. Then the banker will get the most credit = biggest bang for the buck = self regulating without welfare from the state.
- Using service area as a bonus does not work. Functional analysis for a bank is based on ecological facts only. In a court, a judge would not like to hear that one bank got higher credits or a larger service area simply because the regulating agency liked one bank site more than another.
- Site suitability is not a function analysis. Function analysis is looking for ecological benefits.
- The rule should provide some guidance/criteria on where agencies want banks sited. Watershed planning is a criterion. It can help bankers to know where to site banks.

Andy McMillan stated that he was surprised by the lack of support for incentives in the rule. He stated that most bankers will want to make money and will want to know how much per credit it will cost to build the bank. If left solely up to the market, banks will be sited based on land costs rather than on suitable locations. He also stated that the team has consistently deferred decision-making until the determination of credits. Functional assessment/analysis will not be enough to determine credits. McMillan proposed that perhaps a subcommittee addressing function assessment could meet to address this. He mentioned that by May, the main elements will have been covered and the team may discover that not everything can be dealt with through the determination of credits.

The next advisory team meeting will be held **Monday, April 19, 1999**. The General Administration Auditorium has been reserved, but other options are being pursued.

The following meeting has been set for Monday, May 24, 1999.

NOTE: ANOTHER LOCATION HAS BEEN SELECTED FOR THE APRIL MEETING. THE MEETING LOCATION HAS CHANGED FROM THE GENERAL ADMINISTRATION BUILDING TO THE OLYMPIA CENTER, 222 N. COLUMBIA.